

立法會
Legislative Council

LC Paper No. CP 514/01-02
(These minutes have been seen
by The Ombudsman)

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Legislative Council Members' Meeting
with Ms Alice TAI, JP, The Ombudsman,
held on Wednesday, 5 December 2001, at 11:00 am
in Conference Room A of the Legislative Council Building

Members Present : Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon NG Leung-sing, JP
Hon Andrew WONG Wang-fat, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon TAM Yiu-chung, GBS, JP
Hon Michael MAK Kwok-fung
Dr Hon LO Wing-lok
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Attendance by Invitation : Office of The Ombudsman

Ms Alice TAI, JP
The Ombudsman

Mrs Isabella WONG FUNG Pui-han
Principal Executive Officer

Staff in Attendance: Deputy Secretary General
Mr LAW Kam-sang, JP

Mrs Vivian KAM
Chief Assistant Secretary (Complaints)

Ms YUE Tin-po
Senior Assistant Secretary (Complaints)3

Action

I. Chairman's opening remarks

The Chairman welcomed Ms Alice TAI, The Ombudsman, and Mrs Isabella WONG FUNG Pui-han, Principal Executive Officer of the Office of The Ombudsman, to the meeting. She said that the purpose of the meeting was for The Ombudsman to brief Members on the work of her Office, and for both parties to exchange views on issues of mutual concern.

II. Briefing by The Ombudsman on the work of The Ombudsman's Office

(LC Paper No. CP 228/01-02(05))

Performance pledges

2. The Ombudsman pointed out that amongst complaint cases concluded in the 2000-01 reporting year, 50.6% was concluded within three months, 44% was concluded between three and six months, and 5.4% took more than six months to conclude. Ms Emily LAU enquired whether The Ombudsman would amend her performance pledges or seek additional resources to achieve the targets in the light of the Office's failure to meet its pledges in the 2000-01 reporting year. The Ombudsman advised that inability to meet the performance pledges of concluding 60% of cases within three months and 40% within three to six months was due to the increased complexity of the cases and therefore longer investigation time was required. Some cases could not be concluded because of factors beyond the Office's control, e.g. pending the outcome of internal investigations by Government departments. She cited a complaint case in which the Office had to call for and study policy papers dating back to 1972. In such cases, she was confident that the complainant would see that the Office was committed to a proper investigation of his case, rather than seeking a hasty conclusion for the sake of fulfilling its performance pledges. In addition, there had been an increase in the number of revived cases challenging the Office's conclusions or seeking a review because of new developments. Given the high incidents of staff changes because of delinking, the Office had to provide time for new recruits' learning curve. This would also weaken the Office's ability in meeting its performance pledges. To ensure operational efficiency and continuity during the transitional period, The Ombudsman might delay the posting out of some of the civil servants. The Ombudsman would prefer not to revise the performance pledges at this stage. Since further staff changes were expected in the coming 18 months, she would closely monitor the work progress and use temporary relief measures if necessary.

3. Ms Emily LAU expressed support for The Ombudsman's decision not to revise the Office's performance pledges at this stage. She then asked if the increase in the number of complaint cases was an indication of an upsurge of maladministration problems in the Government and public organizations. The Ombudsman thought not, but believed that the increase could be attributed to the

Action

success of the Office's publicity and promotion programmes in enhancing the public's awareness of their rights and understanding of the work of the Office.

Publicity and promotion programmes

4. Mr NG Leung-sing enquired about the most popular and effective special publicity and promotion programme launched by the Office. The Ombudsman advised that the Office had a many pronged publicity and promotion programme. In the last reporting year, her Office had organized seminars to explain its work to various community groups with grassroot connections, including personal assistants to District Council members and Legislative Council (LegCo) Members. In addition, Announcements of Public Interest were broadcast on local TV and radio channels, and public buses, while publicity posters were put up in MTR stations. The Office also staged roving exhibitions in MTR stations, shopping centres and Government office buildings throughout the territory. In general, the mass media were most effective and accounted for 40% of the complaints. Mr NG Leung-sing suggested that the Office could seek assistance from the Radio Television Hong Kong so as to increase the publicity air time where possible.

Telephone complaints

5. Mr NG Leung-sing noted that out of 551 telephone complaints received, the Office had taken follow-up actions on 60% of them. As the Office might not be able to cope with the increase in caseload, he enquired if it would continue to encourage the public to lodge their complaints by telephone. In response, The Ombudsman advised that while complainants preferred lodging their complaints by telephone, it was worth noting that some complainants merely used this service to vent their immediate frustration, many would neither respond nor verify the main points of their complaints when they were subsequently contacted by the staff of the Office. As a result, their cases could not be pursued further and resources were wasted.

6. Mr NG Leung-sing enquired about the follow-up of cases lodged through the different avenues, whether in writing, by personal attendance and by telephone. The Ombudsman advised that no such statistics were available or necessary. In fact, the Office would follow up on all complaints that fell within her jurisdiction, irrespective of how they were lodged. To avoid causing disturbance to the investigators, complainants were discouraged from using the telephone for the further processing of their cases.

Recommendations accepted and rejected

7. In response to Ms Audrey EU, The Ombudsman explained that 5% out of the 190 recommendations made in the last reporting year were not accepted or implemented by the departments/organizations concerned. This could be attributed to the time needed by the Administration to seek additional resources

Action

or even legislative amendments required for the implementation of the remaining 5% of the proposals.

8. In response to Ms Audrey EU, The Ombudsman pointed out that her recommendations included remedies in the form of apologies or financial redress. Once accepted by the Administration, the Office would monitor implementation and require the relevant departments or organizations to provide three-monthly progress reports until the recommendations had been fully implemented. At the request of the Chairman, she undertook to provide Members with figures on recommendations which were accepted and those were implemented.

The
Ombudsman

(Post-meeting note: In her reply dated 24 December 2001 to the Secretariat, The Ombudsman stated that in the last reporting year, the Administration accepted a total of 186 recommendations, of which 144 had already been implemented. The remaining 42 recommendations were currently at varying stages of implementation.)

9. The Ombudsman informed Members that the Administration would, within three months of tabling The Ombudsman's Annual Report, arrange to submit a Government Minute to LegCo detailing the follow-up actions taken by Government departments and public organizations in implementing The Ombudsman's recommendations.

10. Mr Michael MAK asked what were the consequences if the organizations concerned did not take follow-up actions as recommended by The Ombudsman. In reply, The Ombudsman advised that if she was of the opinion that the organization concerned had not adequately acted upon the recommendations in her investigation report to the head of the organization, she might submit both the report and her recommendations together with any further observations to the Chief Executive in accordance with The Ombudsman Ordinance (Cap. 397). She confirmed that no such report was made to the Chief Executive during the last reporting year.

Formal investigation

11. In reply to Mr James TIEN, The Ombudsman advised that in the last reporting year, the Office received 11 821 enquiries and 3 709 complaints. A total of 161 complaints were formally investigated, of which 69 (42.9%) were substantiated or partially substantiated. This did not suggest that the remaining cases were not investigated or involved no culpability. Upon receipt of a complaint, the Office would first ascertain whether the complaint fell within its jurisdiction. An investigation would commence once the complaint was accepted. Depending on the nature and the issues involved, a great majority of the complaints could be concluded without a full investigation. Relatively minor complaints could be resolved through "Internal Complaint Handling Programme", "Rendering Assistance" or "Mediation Service". For more

Action

serious cases, The Ombudsman would decide on conducting a formal investigation for which The Ombudsman Ordinance (Cap. 397) had prescribed certain formal procedural steps. She stressed that even if remedial actions had been taken by the complainee department or organization, she might still decide to launch a formal investigation if she believed that there might have been serious maladministration.

12. Mr James TIEN considered that the creation of too many new posts and the formulation of excessive policies by the Government had resulted in overlapping of operational duties amongst Government departments. He asked whether The Ombudsman shared his view. The Ombudsman said that it would not be proper for her to comment on Mr. Tien's views. However, she confirmed that in some complaints, investigation did establish a lack of co-ordination among departments. This could often be observed in cases involving land management and village road maintenance, etc.

13. Responding to Mr James TIEN's enquiry, The Ombudsman also advised that a press conference was normally held once every six to eight weeks to brief the media on the latest work of the Office. In addition, a press briefing would be held upon completion of a direct investigation to publish the findings. She emphasized that only cases involving public interest would be disclosed at these forums.

14. Dr LO Wing-lok sought clarification on the definition of formal investigation and the categories of complaints which had been dealt with by formal investigation. The Ombudsman explained that there were express statutory provisions governing the conduct of formal investigations. A formal investigation would begin with a formal declaration of the investigation to the head of the organization concerned in accordance with the legislative requirement. The Office would then conduct extensive inquiries. Upon completion of the investigation, The Ombudsman would prepare a draft investigation report and seek the comments of the organization concerned. She said that the categories of complaints concluded by formal investigation were set out in her Annual Report. The conclusions of such investigations included : complaints were substantiated, partially substantiated, unsubstantiated and incapable of being determined.

Direct investigation

15. In reply to Ms Audrey EU's question on the definition of direct investigation, The Ombudsman explained that even in the absence of a specific complaint, the Office was empowered by legislation to initiate direct investigation into suspected maladministration and address issues of public concern and interests.

Action

Complaints without full justifications

16. Ms Audrey EU enquired how the Office handled complaints that were not supported by evidence given by independent witnesses. The Ombudsman advised that the Office would try its best to corroborate evidence and information provided by complainants and complainee organizations. If the information and evidence were conflicting, no conclusion would be made as to whether the complaint was substantiated or not. This would be similar to an open verdict in court cases. The Ombudsman would, nevertheless, comment on the case. There were a total of 12 such cases in the last reporting year.

17. In response to Dr LO Wing-lok, The Ombudsman advised that in handling complaints without full justifications, the Office would follow the normal assessment procedures before deciding whether to proceed with an investigation. Before closing the case it would inform the complainant of the results of the follow-up actions. The case would not be reviewed unless there were new developments. If the complainant was still dissatisfied with the Office's reply, he or she would be advised to pursue the case through other channels such as legal avenues.

Complaints against non-Government organizations (NGOs)

18. Mr Michael MAK asked if The Ombudsman was empowered to investigate into complaints on alleged maladministration of NGOs. In reply, The Ombudsman advised that it depended on whether the organization concerned was included in the list of organizations under Schedule 1 to The Ombudsman Ordinance (Cap. 397). If not, but if she considered that assistance should be extended to the complainant, The Ombudsman would try to explore with the relevant organization or Government departments to see whether there were ways to help resolve the complainant's problems.

Complaints against the Office of The Ombudsman

19. Ms Emily LAU enquired about the number of complainants who were dissatisfied with the performance or investigation findings of the Office. The Ombudsman advised that her Office had only been compiling statistics on revived cases since May 2001, intending that these should be published in the Annual Report for 2002-03. Between May and the end of October 2001, a total of 103 "complaints" were lodged against the Office. Most of these were revived cases in which the complainants expressed unhappiness about the findings or conclusions reached by the Office. Three complained about the attitude of staff of the Office or the unduly long processing time.

Action

III. Discussion items raised by LegCo Members

- (a) **Delinking of the Office of The Ombudsman from the Administration: pay and conditions of service of staff, and recruitment position**
(LC Paper Nos. CP 228/01-02(06) & (07))

Progress of recruitment exercise

20. The Ombudsman advised that owing to protracted negotiations on the new remuneration package with the Administration, the recruitment plan had been delayed for six months. Nevertheless, in the current financial year the Office had expedited its recruitment efforts. It was anticipated that by the end of the financial year, 67% of the establishment would be filled by contract staff. Sufficient time would be given to the new recruits to familiarize themselves with their duties and receive in-service guidance to avoid disruption to the service provided to the public. The entire recruitment exercise was expected to be completed in less than 24 months.

Remuneration package

21. In response to Mr James TIEN, The Ombudsman advised that the new remuneration package was governed by two basic principles. Firstly, it was simple and easy to administer so as to minimize administrative costs. Secondly, the terms of the new package were “no better than” those available to civil servants of comparable ranks. The package consisted of a basic salary, a cash allowance and an end-of-contract gratuity. Contract staff would not receive any increments, their pay would remain unchanged throughout the contract period and pay adjustment would only be considered upon renewal of contract. The Ombudsman stressed that the Office had taken account of the pay levels of public organizations and the market rate when drawing up the new remuneration package with the entry points of some posts being 30% less than their civil service equivalent. For this reason, no serving civil servants had opted to remain in the Office. Recruitment priority would be accorded to the recruitment of the Complaint Officer grade staff. The number of contract staff in this grade already reached 45% of the overall establishment. In response to Mr. Tien, The Ombudsman said that large number of applications had been received in response to the Office’s recruitment advertisement, but many candidates did not possess the necessary qualifications and experience.

22. Ms Emily LAU expressed support for The Ombudsman’s decision to pay her staff at market rate. She enquired how the remuneration package was drawn up and who participated in the decision making process. In response, The Ombudsman advised that she had strictly followed the “no better than” principle in determining the remuneration package. The proposals were formulated by administrative staff, informal consultation would then be conducted to gauge staff response, and the proposals would then be considered by directorate officers and finalized on approval by The Ombudsman. The proposals would then be submitted to the Director of Administration who would take advice from the

Action

Finance and Civil Service Bureaux. During the process, there would be numerous meetings at different levels between The Ombudsman and/or her staff, and the Administration as represented by the Finance Bureau, Civil Service Bureau and the Administration Wing. In due course, a Memorandum of Administrative Arrangements would be drawn up to govern The Ombudsman's relationship with the Administration. In reply to Ms Emily LAU, The Ombudsman advised that the current one-line-vote arrangement was an allocation based on an agreed baseline as at the date of delinking, with staff costs being funded at mid-point salaries. This would mean that the staff costs element of the subvention would in due course be insufficient when staff gained experience and their salaries progressed beyond the mid-point of their salary scale. It would, therefore, be necessary to formulate a long-term staffing and recruitment plan to prevent the Office getting to the stage of not being able to fund the salaries of experienced staff.

The
Ombudsman

23. To address Members' concern, The Ombudsman undertook to provide the following additional information for Members' reference, as and when available:

- (a) the principles and arrangements relating to the remuneration package of staff as contained in the Memorandum of Administrative Arrangements, when finalized;
- (b) the mechanism to be adopted by The Ombudsman for determining revisions to the remuneration package in future; and
- (c) the mechanism as agreed between The Ombudsman and the Administration on the additional financial provision required for allocation of future salary revisions.

Special meeting

24. In response to Ms Emily LAU, the Chairman pointed out that at the meeting on 13 June 2000, Members and The Ombudsman had agreed to change the frequency of their meeting to once a year, and that the meeting would be held towards the end of each year. However, special meetings could be arranged at the request of either side. The Chairman advised that she would await further information from The Ombudsman as outlined above before deciding on the need for any special meeting.

(b) Acquisition of permanent office accommodation
(LC Paper Nos. CP 228/01-02(08) & (09))

25. Regarding the acquisition of permanent office accommodation, The Ombudsman advised that following an extensive search, the Office had shortlisted a number of possibilities. Since the Government Property Agency had been authorized to commence the negotiation process, she considered it inappropriate to disclose details at the present stage.

Action

26. Mr James TIEN commented that the fitting-out cost of \$6,500 per sq m proposed by the Architectural Services Department was too expensive. He was of the view that it was not necessary for the Administration to invite tender for the fitting-out work and suggested that the Office should engage its own contractors to provide good service at a lower charge. The Ombudsman advised that no decision had yet been made in this regard but she would take Members' views into consideration.

27. Ms Emily LAU considered that the fitting-out cost should be reduced as far as possible. She also enquired about the location of the shortlisted premises and the expiry date of the current lease. In reply, The Ombudsman advised that the Government Property Agency had identified a handful of suitable developments on Hong Kong Island and negotiations were underway. Nevertheless, unless the negotiated price was acceptable, she would prefer to continue to rent by seeking a renewal of the current lease which had yet to expire. Although the Finance Committee of LegCo had approved funding for The Ombudsman to buy permanent office accommodation, she would not proceed in haste to ensure effective use of public money. Members urged The Ombudsman to inform them once a decision was made.

The
Ombudsman

IV. Any other business

28. As no other issues were raised, the Chairman declared the meeting closed. She also thanked The Ombudsman and her colleague as well as Members for attending the meeting.

29. The meeting ended at 12:25 pm.

Legislative Council Secretariat
18 February 2002